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REMARKS/ARGUMENTS

Initially, Applicants would like to express their appreciation to the Examiner for the detailed Official Action provided. However, Applicants note that the Examiner has not acknowledged that the drawings are acceptable, and it is requested that the Examiner indicate the same in the next Official Action.

Upon entry of the present paper, the specification and claims 1 and 3 will have been amended. Claims 1 and 3-6 are currently pending, with claims 3, 4 and 6 indicated as being allowed on the FORM PTOL-326. Applicants note that on Page 3 of the Official Action, the Examiner has indicated that claims 3, 4 and 6 would be allowable if rewritten to overcome the rejection under 35 U.S.C. § 112, second paragraph. However, Applicants note that claims 3, 4 and 6 have not been rejected under 35 U.S.C. § 112, second paragraph in the Official Action dated November 22, 2005, and that the passage appears to be inadvertently included in the Official Action. Applicants thus request confirmation in this regard.

In addition, Applicants have made a cosmetic amendment to claims 1 and 3 to change the word "inserted" to --insertable--, solely to more clearly recite this limitation.

In the Official Action, the Examiner rejected claims 1 and 5 under 35 U.S.C. § 112, first paragraph, because in the Examiner's opinion, the recitation of the withdrawal prevention portions being formed along with a plurality of cutting lines is not enabled by the Specification. In this regard, the examiner asserts that, as claimed, the prevention portions and cutting lines are two separate

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elements; which is broader than that taught by the Specification (see Page 3 of the Official Action).

In the Official Action, the Examiner rejected claims 1 and 5 under 35 U.S.C. § 112, second paragraph, because in the Examiner's opinion, the recitation of the withdrawal prevention portions being formed along with a plurality of cutting lines is unclear and incorrect. In this regard, the examiner asserts that, as claimed, the prevention portions and cutting lines are two separate elements (see Page 2 of the Official Action). Without acquiescing to the propriety of the 35 U.S.C. § 112, first paragraph and 35 U.S.C. § 112, second paragraph rejections, Applicants have amended claim 1 to more clearly recite that the withdrawal prevention portions are provided with a plurality of cutting lines. Therefore, the rejection of claims 1 and 5 under 35 U.S.C. § 112, first paragraph and 35 U.S.C. § 112, second paragraph is believed to be moot and should be withdrawn.

Further, although Applicants respectfully disagree with the Examiner's rejections under 35 U.S.C. § 112, first and second paragraphs, in that one skilled in the art would find that the present disclosure is indeed enabling and that one skilled in the art would readily understand what these elements were prior to the present Amendment, Applicants have amended these claims solely to expedite the patent application process. It is thus respectfully requested that the Examiner withdraw the rejection of claims 1 and 5 under 35 U.S.C. § 112, first and second paragraphs.

In the Official Action, the Examiner objected to the Specification for failing

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to provide antecedent basis for the claimed subject matter. In particular, the Examiner asserts that there is no antecedent basis for withdrawal prevention portions. Without acquiescing to the propriety of the objection, the Specification has been amended to recite "withdrawal prevention portions" where appropriate. Therefore, the objection to the Specification is believed to be moot and should be withdrawn.

In the Official Action, the Examiner rejected claim 1 and 5 under 35 U.S.C. § 102(e) as being anticipated by CROZET et al. (U.S. Patent No. 6,527,803), or alternatively MCGAHAN et al (U.S. Patent Pub. No. 2003/0130737).

Although Applicants do not necessarily agree with the Examiner's rejection of the claims on these grounds, nevertheless, Applicants have amended independent claim 1 to clearly obviate the above-noted grounds of rejection solely in order to expedite prosecution of the present application. In this regard, Applicants note that CROZET and MCGAHAN fail to teach or suggest the combination of elements as recited in amended claim 1. In particular, claim 1, as amended, sets forth an intervertebral cage including, inter alia, withdrawal prevention portions formed on the upper and lower surfaces of the main body, and provided with a plurality of cutting lines slanting at a predetermined angle with respect to all side surfaces of the main body.

Applicants submit that CROZET and MCGAHAN lack any disclosure of at least a plurality of cutting lines slanting at a predetermined angle with respect to all side surfaces of the main body.

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The Examiner cites to CROZET, the surface through which the duct (14) extends, as purportedly teaching a side surface. However, the aforementioned interpretation is in direct contradiction with the disclosure of CROZET; which states that the axis of the cylindrical duct extends through two opposite corners, and goes on to describe element 8 as side faces (Col. 3, lines 44-47 and Col. 3, lines 35-40, respectively). Further, the cutting lines, as disclosed in CROZET, extend perpendicular and parallel with respect to the side faces (8, see FIGS 1 and 2). Thus, even assuming, arguendo, that the surface of CROZET, through which the duct (14) extends, could be properly characterized as a side surface; CROZET still fails to disclose at least a plurality of cutting lines slanting at a predetermined angle with respect to all side surfaces of the main body, as recited in amended claim 1.

Further, the Examiner cites to MCGAHAN, Figure 4, as purportedly teaching a plurality of cutting lines (31) slanting at a predetermined angle with respect to one of the side surfaces of the main body (see Page 5 of the Official Action). However, contrary to the Examiner's assertion, reference numeral 31 does not denote cutting lines; rather the lines (Figure 4, located on surface 31), are actually cross-hatchings, indicating a mid-plane of the implant (see page 1, Figure 4, brief description). In this regard, the bone engaging surfaces and ridges (12, 14 and 13, 15, respectively) are actually shown in Figures 1 and 2a. Further, MCGAHAN discloses the ridges extending perpendicular and parallel to several side surfaces of the main body (see Figure 1). Thus, MCGAHAN does not disclose at least a plurality of cutting lines slanting at a predetermined angle

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with respect to all side surfaces of the main body. Accordingly, the rejection of claims 1 and 5 under 35 U.S.C. § 102(e) is improper for all the above reasons and withdrawal thereof is respectfully requested.

Absent a disclosure in a single reference of each and every element recited in a claim, a *prima facie* case of anticipation cannot be made under 35 U.S.C. § 102. Since the applied reference fails to disclose each and every element recited in independent claim 1 as well as claim 5 dependent therefrom, these claims are not anticipated thereby. Further, pending dependent claim 5 recites additional features that further define the present invention over the prior art. Accordingly, the Examiner is respectfully requested to withdraw the rejections under 35 U.S.C. § 102 and allow all pending claims in the present application.

Applicants respectfully submit that the rejection of claims 1 and 5 under 35 U.S.C. § 102(e) is improper at least for each and certainly for all of the above-noted reasons. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection, and an early indication of the allowance of all of the pending claims.

Thus, it is respectfully submitted that all of the claims in the present application are clearly patentable over the references cited by the Examiner, either alone or in combination, and an indication to such effect is respectfully requested, in due course.

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SUMMARY

Applicants submit that the present application is in condition for allowance, and respectfully request an indication to that effect. Applicants have argued the allowability of the claims and pointed out deficiencies of the applied references. Accordingly, reconsideration of the outstanding Official Action and allowance of the present application and all the claims therein are respectfully requested and is now believed to be appropriate.

Applicant notes that this amendment is being made to advance prosecution of the application to allowance, and should not be considered as surrendering equivalents of the territory between the claims prior to the present amendment and the amended claims. Further, no acquiescence as to the propriety of the Examiner's rejection is made by the present amendment. All other amendments to the claims which have been made in this amendment, and which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

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Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,  
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